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In re Application of	:	
EBERL	:	
Serial No.: 10/551,443	:	DECISION ON
PCT App. No.: PCT/EP01/11634	:	
Int'l Filing Date: 08 October 2001	:	PETITION UNDER
Priority Date: 07 October 2000	:	
Attorney Docket No.: 101795.56306US	:	37 CFR 1.137(b)
For: DEVICE AND METHOD FOR DETER-	:	
MINING THE ORIENTATION OF AN EYE	:	

This decision is in response to applicant's petition to revive under 37 CFR 1.137(b) filed 29 September 2005 in the above-captioned application in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 08 October 2001, applicant filed international application PCT/EP01/11634 which claimed priority to an earlier application filed 02 October 2000. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 April 2003.

On 29 September 2005, applicant filed a request for entry into the U.S. national stage along with the present petition under 37 CFR 1.137(b) considered herein.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant has satisfied items (1)-(2). Item (4) does not apply.

Regarding item (3), applicant has provided a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional". Specifically, applicant states that under German employee inventor's law, "Physoptics took over their right to this application worldwide. Physoptics later

went into bankruptcy and their trustee refused to release their right to this application and refused to initiate the US national phase." Applicant further explains that "[b]ecause all rights to this application were not held by Physoptics, it was necessary to negotiate with the other owners regarding prosecution of the application which not completed until near the end of 2004". Further delays were attributed to reconstruction of the files, consultation with others and arranging financing.


Thus, it appears that the PCT application was subject to the bankruptcy trustee's control and the "other owners". In addition, applicant has not detailed the time period since the end of 2004 until the filing of the present petition and shown that this period was used by applicant "to reconstruct this and other files including the consultation with the others involved in ... time to arrange financing and manage by employment led to further delays" before the present petition could be filed. Applicant has not provided a detailed account of the knowledge and actions of the bankruptcy trustee and the other owners for the period of 07 April 2003 through the filing of the present petition on 29 September 2005. If the trustee knew of the 30 month deadline for entering the National stage in the United States and did not divert funds to either timely enter the U.S. National stage or make arrangements for revival; the lack of such actions could be construed as intentional abandonment. Absent a more detailed explanation of the knowledge and actions of the trustee and the other owners, it is not possible to grant applicant's petition. The question under 37 CFR 1.137 is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unavoidable or unintentional.

CONCLUSION

For the reasons above, applicant's petitions under 37 CFR 1.137(b) is **DISMISSED**. The application remains **ABANDONED** as to the United States of America.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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